

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MINNESOTA**

In re:

JAMES E. & LINDA L. AUGUSTIN,

Debtors

**Bankruptcy No. 04-34681
Chapter 7**

**NOTICE OF MOTION AND MOTION
OBJECTING TO CLAIMED
EXEMPTION**

TO: The Debtors and other entities specified in Local Rule 9013-3.

1. Michael S. Dietz, Trustee of the above bankruptcy estate moves the Court for the relief requested below and gives notice of hearing.

2. The Court will hold a hearing on this Motion on October 20, 2004, at 2:30 p.m., in Courtroom 228A, United States Courthouse, at 316 North Robert Street, in St. Paul, Minnesota.

3. Any response to this Motion must be filed and delivered not later than 2:30 p.m. on October 13, 2004, which is seven days before the hearing, or filed and served by mail not later than October 10, 2004, which is ten days before the time set for the hearing. **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334, Bankruptcy Rule 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The Petition commencing this Chapter 7 case was filed on August 10, 2004. The case is now pending in this Court.

5. This Motion arises under 11 U.S.C. §§ 522, Bankruptcy Rule 4003 and Local Rule 4003-1(a). This Motion is filed under Bankruptcy Rule 9014 and Local Rules 9013-1, 9013-2, and 9013-5.

6. The Debtors have scheduled a personal injury claim against Annett Holdings, Inc. d/b/a Best Inns & Suites and claimed it as exempt on Schedule C under MSA § 550.37 subd. 22. Attached as Exhibit “A” is a true and correct copy of Schedule C filed in this case.

7. Movant objects to the above noted exemption claimed in that schedule for the following reason: The Debtors in this case have listed the value of their claim as “unknown” and have attempted to exempt “100 percent” of the claim. The Trustee is without sufficient information to determine the exact nature and type of damages in this case.

WHEREFORE, the Trustee moves the Court for an Order denying the claimed exemption of the personal injury claim against Annett Holdings, Inc. d/b/a Best Inns & Suites.

Dated: September 29, 2004

/s/ Michael S. Dietz

Michael S. Dietz
Registration No. 188517
DUNLAP & SEEGER, P.A.
Attorneys for Trustee
206 S. Broadway, Suite 505
Post Office Box 549
Rochester, Minnesota 55903
Telephone: (507) 288-9111

VERIFICATION

I, Michael S. Dietz, Trustee, the moving party named in the foregoing Notice of Hearing and Motion, declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Executed on: September 29, 2004

/e/ Michael S. Dietz

Michael S. Dietz, Trustee
206 S. Broadway, Suite 505
Post Office Box 549
Rochester, Minnesota 55903
Telephone: (507) 288-9111

EXHIBIT “A”

Debtor(s)

SCHEDULE C - PROPERTY CLAIMED AS EXEMPT

Debtor elects the exemptions to which debtor is entitled under:

(Check one box)

☐ 11 U.S.C. § 522(b)(1): Exemptions provided in 11 U.S.C. § 522(d). NOTE: These exemptions are available only in certain states.☒ 11 U.S.C. § 522(b)(2): Exemptions available under applicable nonbankruptcy federal laws, state or local law where the debtor's domicile has been located for 180 days immediately preceding the filing of the petition, or for a longer portion of the 180-day period than in any other place, and the debtor's interest as a tenant by the entirety or joint tenant to the extent the interest is exempt from process under applicable nonbankruptcy law.

DESCRIPTION OF PROPERTY	SPECIFY LAW PROVIDING EACH EXEMPTION	VALUE OF CLAIMED EXEMPTION	CURRENT MARKET VALUE OF PROPERTY WITHOUT DEDUCTING EXEMPTIONS
<u>SCHEDULE A - REAL PROPERTY</u>			
Homestead located at - 905 5th Ave NW, legally described as follows: West 53.45 feet of Lot 5 - West 45 feet of Lot 6 and East 8.45 feet of the South 15 feet of the West 53.45 feet of lot 6 - all in Block 35 of Yates and Lewis Addition in City of Austin, Minnesota, County of Mower.	MSA §§ 510.01, 510.02	25,000.00	89,500.00
<u>SCHEDULE B - PERSONAL PROPERTY</u>			
Hormel Credit Union claimed exempt to 75% of total as proceeds of earnings deposited within last 20 days.	MSA § 571.922, 550.37 subd. 13	37.50	50.00
Wells Fargo Bank - Automatic deposit of husband's social security and pension checks claimed 100% exempt.	MSA § 550.37 subd. 24 U.S.C. 42 § 407	1.00 100.00	100.00
furniture, etc.	MSA § 550.37 subd.4(b)	5,000.00	5,000.00
reading books	MSA § 550.37 subd. 2	100.00	100.00
clothes	MSA § 550.37 subd. 4(a)	200.00	200.00
Misc. costume jewelry	MSA § 550.37 subd. 4(a)	300.00	300.00
camera	MSA § 550.37 subd.4(b)	150.00	150.00
Hormel Retirement \$141.00 per month ERISA qualified plan not property of the estate.	MSA § 550.37 subd. 24	17,000.00	unknown
Husband's interest in pending claim for Social Security Disability - value unknown, claimed exempt to 100%	U.S.C. 42 § 407	100%	unknown
Personal injury claim against Annett Holdings, Inc. d/b/a Best Inns & Suites - 100% of unliquidated claim of unknown value claimed exempt.	MSA § 550.37 subd. 22	100%	unknown
1990 Ford Truck	MSA § 550.37 subd. 12a	250.00	250.00
1999 Ford Windstar Minivan	MSA § 550.37 subd. 12a	1,200.00	7,000.00
Gateway computer used in sale of nutrition products	MSA § 550.37 subd. 6	1.00	500.00
Paper, envelopes, printer, fax	MSA § 550.37 subd. 6	250.00	250.00
Nutrition products nominal inventory for independent sales of nutrition products	MSA § 550.37 subd. 6	200.00	200.00

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Bankruptcy Case No. 04- 34681

JAMES E. & LINDA L. AUGUSTIN,

Debtors

UNSWORN CERTIFICATE OF SERVICE

I, Emily D. Stenhoff, declare under penalty of perjury that on September 29, 2004, I mailed copies of the following:

Trustee's Notice of Motion and Motion Objecting to Claimed Exemption

by US Mail, postage pre-paid, to each entity named below at the address stated below:

OFFICE OF THE US TRUSTEE
1015 UNITED STATES COURTHOUSE
300 SOUTH FOURTH STREET
MINNEAPOLIS MN 55415

KEVIN H SIEFKEN
CHRISTIAN & PETERSON PA
314 S BROADWAY
ALBERT LEA MN 56007

JAMES E. & LINDA L. AUGUSTIN
905 5TH AVENUE NW
AUSTIN MN 55912

Executed on September 29, 2004

Signed: Emily Stenhoff

Emily D. Stenhoff
DUNLAP & SEEGER, P.A.
P O BOX 549
ROCHESTER MN 55903-0549
(507) 288-9111

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MINNESOTA

In re:

JAMES E. & LINDA L. AUGUSTIN,

Bky Case No. **04- 34681**
Chapter 7

Debtors

**ORDER SUSTAINING TRUSTEE'S
OBJECTION TO DEBTORS' CLAIM
OF EXEMPTION**

AT ST. PAUL, MINNESOTA,

This Chapter 7 case came on before the Court on October 20, 2004, for a hearing on the Trustee's objection to the Debtor's claimed exemption of the following property:

Personal injury claim against Annett Holdings, Inc. d/b/a Best Inns & Suites

Appearances, if any, were noted on the record. Upon the documents on file herein and the arguments of counsel:

IT IS HEREBY ORDERED AND DETERMINED:

1. The Trustee's objection is sustained.
2. The Debtor's interest in the personal injury claim against Annett Holdings, Inc. d/b/a Best Inns & Suites is not exempt and is property of the bankruptcy estate to be administered by the Trustee in due course.

Dated: October __, 2004

BY THE COURT:

Dennis D. O'Brien
United States Bankruptcy Judge